

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WORLDWIDE HOME PRODUCTS, INC.,

Plaintiff,

-v-

No. 11CV3633-LTS-MHD

BED, BATH AND BEYOND, INC. et al.,

Defendant.

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MEMORANDUM ORDER

Jeffrey Sonnabend, Esq., moved on March 3, 2015, to intervene in this action and to stay all proceedings, including Defendants' Motion for Attorney Fees and Related Expenses (docket entry no. 235), pending an appeal to the Court of Appeals for the Federal Circuit of this Court's February 11, 2015, decision (Docket entry no. 256, the "Decision"). The Decision granted summary judgment of non-infringement and declared Plaintiff's relevant patent invalid and unenforceable as the product of inequitable conduct, in part, based on a finding that the only reasonable inference based on the record was that Mr. Sonnabend had made material misstatements or omissions to the patent examiner. On March 9, 2015, while Mr. Sonnabend's motion to intervene was pending, Plaintiff filed a notice of appeal of the Decision to the Federal Circuit. (Docket entry no. 279.)

"The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982) (citing United States v. Hitchmon, 587 F.2d 1357 (5th Cir. 1979)). Once a notice

of appeal is filed, a district court should deny a pending intervention motion because it has been divested of jurisdiction to effect the relevant order by the filing of the notice. Drywall Tapers & Pointers of Greater New York, Local Union 1974 of I.U.P.A.T., AFL-CIO v. Nastasi & Associates Inc., 488 F.3d 88, 94 (2d Cir. 2007). Therefore, this Court does not have jurisdiction of the intervention motion because Plaintiff has already filed a notice of appeal from the Decision.

Mr. Sonnabend's motion to intervene is denied without prejudice to an appropriate application to the Court of Appeals.

Mr. Sonnabend's motion to stay decision on the Motion for Attorney Fees and Related Expenses is denied.

This Order resolves docket entry number 269.

SO ORDERED.

Dated: New York, New York
March 31, 2015

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge